## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

## PRIME HEALTHCARE SERVICES, LLC D/B/A CENTINELA HOSPITAL MEDICAL CENTER

and

Case 31-CA-102407

## SEIU UNITED HEALTHCARE WORKERS-WEST

## ORDER1

The Employer's petition to revoke subpoena duces tecum B-705873 is denied as untimely. Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations requires that a petition to revoke an investigative subpoena must be filed within 5 days after the date of service of the subpoena.<sup>2</sup> The subpoena here was served on the subpoenaed party on June 13, 2013. Thus, the instant petition, which was filed June 24, 2013, is untimely.<sup>3</sup>

<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>&</sup>lt;sup>2</sup> Sec. 102.31(b) states in relevant part that "[a]ny person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received."

Although the Employer acknowledges that the subpoena was received by the Employer's custodian of records on June 13, 2013, it contends that service of the subpoena was not perfected until its counsel of record received a copy on June 17, 2013. The Employer notes that the Board's rules provide that "[w]henever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party." NLRB Rules and Regulations, Sec. 102.113(f). The Employer contends that therefore the petition to revoke filed on June 24, 2013, was timely. We disagree. As noted above, Sec. 102.31(b) states that "any *person* served with a subpoena, ... if *he or she* does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena." (Emphasis added.) This language indicates that the relevant date is the date of service on the subpoenaed party. Further, we observe that

In addition, even assuming that the petition was timely filed, it is lacking in merit. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoena. See generally, *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9<sup>th</sup> Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4<sup>th</sup> Cir. 1996).

Dated, Washington, D.C., September 6, 2013.

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

there is no assertion by the Employer that its attorneys were unaware of the subpoena until they formally received a copy of the subpoena by regular mail.